

**REMARKS**

Claims 13-74 are pending in the application.

Claims 13-19, 21-39 and 41-74 stand rejected.

Claims 20 and 40 stand objected to.

Claims 13, 17-19, 21, 25, 33 and 53-59 have been amended without adding any new subject matter to the instant application. Dependent claims 17-19, 21, 25, and 54-58 have been amended merely to provide proper claim dependency and antecedent support in view of present claim amendments to corresponding independent claims. The present claim amendments find support throughout the specification of the instant application including, for example, in the embodiment of Figure 3 and the discussion on pages 15-17 in the specification. Applicants assert that the present claim amendments should not be construed as indicating Applicants' acceptance of Examiner's reasons for rejection of various claims in the Office Action.

Claims 65-74 have been cancelled without prejudice to subject matter contained therein.

Claims 75-80 have been added to recite additional protectable subject matter. Support for the subject matter recited in the new claims 75-80 is found, for example, in the discussion on pages 13-14 of the specification of the instant application. Applicant asserts that no new matter is added to the specification through the present claim additions.

Therefore, after present claim amendments, additions, and cancellations, claims 13-64 and 75-80 now remain pending in the application.

Amendments to Specification

The abstract has been amended to comply with the size requirements under MPEP § 608.01(b). In view of the present amendments to the abstract, the Examiner is respectfully requested to withdraw the objection to the abstract. Applicants asserts that no new subject matter is added to the instant specification in view of the present amendments to the abstract.

The Office Action also objected to the specification because of some typographical errors at various locations in the specification. In the present response, paragraphs containing those typographical errors have been amended as recommended by the Examiner. Hence, Applicant respectfully requests the Examiner to also withdraw the objections to the specification.

Double Patenting

Claims 65-67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,724,721. Without acceding to the Examiner's reasons for this double patenting rejection, Applicant has cancelled claims 65-67 without prejudice. Therefore, this double patenting rejection is moot in view of the present cancellation of claims 65-67. However, Applicant reserves the right to pursue patent protection for the subject matter recited in the cancelled claims 65-67, for example, in a continuing application.

Rejection of Claims under 35 U.S.C. §101

Claims 53-58 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to allegedly non-statutory subject matter. Without acceding to the Examiner's proffered

reasons for rejecting claims 53-58 under 35 U.S.C. § 101, and merely to expedite prosecution of the instant application, Applicant has amended claims 53-58 as recommended by the Examiner in the Office Action. Amended claims 53-58 are now directed to a computer-readable medium having computer-executable instructions. Therefore, Applicant asserts that amended claims 53-58 now recite statutory subject matter. Hence, withdrawal of rejection of claims 53-58 under 35 U.S.C. § 101 and allowance thereof is respectfully requested.

*Rejection of Claims under 35 U.S.C. §102*

Claims 13-19, 21, 25-26, 28-39, 41, 45-46 and 48-70 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Spinney, et al., U.S. Patent No. 6,426,943 (hereinafter referred to as "Spinney"). The anticipation rejection of claims 65-70 is moot in view of present cancellation thereof. Applicant traverses the § 102(e) rejection of the remaining claims 13-19, 21, 25-26, 28-39, 41, 45-46, and 48-64 in view of the present claim amendments and following remarks.

While not acceding to the reasons presented in the Office Action for various rejections or conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicant has chosen to respectfully disagree and traverse the anticipation and obviousness rejections as follows, in light of the amendments made herein. Applicant reserves the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicants also reserves the right to dispute Examiner's reasons for rejections or to provide additional arguments for patentability of pending claims, as necessary.

As will be appreciated, “[a]...claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully submits that Spinney does not satisfy this burden, as explained in more detail below.

Spinney relates to tracking the number of data bytes associated with a data flow that is part of a session and automatically lowering the priority given to the transmission of the remainder of a flow once a certain threshold has been reached that indicates that the flow is part of a bulk e-mail or other bulk file transfer. (Spinney, Abstract.) Spinney teaches hashing the header data of a received packet to check whether the packet is part of an existing flow or to identify the destination of the incoming frame. (Spinney, col. 5, lines 26-31; col. 28, lines 23-27; and discussion in columns 18-20.) Spinney also discusses a hierarchical flow and congestion control scheme wherein credits are required for packet transmission over a circuit. (Spinney, col. 20, lines 33-39, and discussion in columns 23-25.)

However, in contrast to teachings in Spinney, amended independent claim 13 recites a method that comprises, *inter alia*, “extracting at least one field from a data packet; determining a flow table index value using said at least one field; identifying a flow table entry using said flow table index value wherein said flow table entry comprises a first field containing a rate credit value, and a second field containing a buffer count value; comparing said rate credit value with zero to determine subsequent processing status of said data packet; dropping said data packet without further processing when ... said rate credit value is zero; and processing said packet using said rate credit value and said buffer count value only when said rate credit value has a non-zero value as determined by said comparison.” (Emphases added.)

Applicant asserts that Spinney fails to teach all the claim limitations recited in amended independent claim 13. In contrast to the observations by the Examiner, Applicant fails to find any teaching in Spinney discussing identifying a flow table entry using a flow table index value determined from at least one field of a data packet, wherein the flow table entry contains a rate credit value as recited in amended independent claim 13. The Hash Tables discussed in column 19 in Spinney do not contain any such rate credit value. In Spinney, the credits are stored in a Transmit Context Table (discussed in column 20 in Spinney), which is entirely different from the L1 and L2 Hash Tables. In Spinney, entries in the Hash Tables are accessed using hashing of the packet header data, but no such hashing is discussed in Spinney for accessing the contents of the Transmit Context Table. (*See*, for example, discussion in columns 19 and 20 in Spinney.) Furthermore, contrary to the recitations in amended independent claim 13, Applicant fails to find any discussion in Spinney requiring (i) comparison of the rate credit value with zero to determine subsequent processing status of the data packet, (ii) dropping of the data packet without further processing when the rate credit value is zero, and (iii) processing of the data packet only when the rate credit value is non-zero as determined by the comparison.

Hence, based on the foregoing discussion, Applicant asserts that Spinney fails to teach all claim limitations recited in amended independent claim 13. Therefore, Applicant asserts that Spinney fails to anticipate amended independent claim 13 as well as its dependent claims 14-19, 21, 25-26, and 28-32. Other pending independent claims 33, 53, and 59 have been amended to contain limitations similar to those discussed above with reference to amended independent claim 13. Hence, at least for the reasons given above, amended independent claims 33, 53, and 59, and their respective dependent claims 34-39, 41, 45-46, and 48-52 (claim 33); 54-58 (claim

53); and 60-64 (claim 59) are also not anticipated by Spinney. Reconsideration and allowance of claims 13-19, 21, 25-26, 28-39, 41, 45-46, and 48-64 is therefore respectfully requested.

Rejection of Claims under 35 U.S.C. §103

Claims 22-24, 42-44 and 71-74 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Spinney in view of Bergman et al., U.S. Patent No. 5,303,237 (“Bergman”).

Claims 27 and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spinney in view of Choudhury et al., U.S. Patent No. 5,541,912 (“Choudhury”).

The obviousness rejection of claims 71-74 is moot in view of present cancellation thereof. Applicant respectfully traverses the obviousness rejection of remaining claims 22-24, 27, 42-44, and 47 in view of the present claim amendments and following discussion.

In order for a claim to be rendered unpatentable under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). Thus, when making a determination of obviousness, the focus should be on what a person of ordinary skill in the pertinent art would have known at the time of the invention, and on what such a person would have reasonably expected to have been able to do in view of that knowledge. This is so regardless of whether the source of that knowledge and ability was documentary prior art, general knowledge in the art, or common sense. MPEP § 2141.

Claims 22-24 and 27 depend from amended independent claim 13, whereas claims 42-44 and 47 depend from amended independent claim 33. Applicant references Applicant’s earlier discussion of non-anticipation of amended independent claims 13 and 33 by Spinney. Applicant asserts that, in addition to failing to anticipate amended independent claim 13, Spinney also fails

to show, teach or reasonably suggest all claim limitations recited in amended independent method claim 13. For example, in Spinney, the discussion of hashing of packet header data (Spinney, column 19) fails to teach, suggest, or recommend using such hashing to access credit values in the Transmit Context Table (discussed in column 20 in Spinney). Furthermore, although Spinney mentions that there is “no transmission unless a credit exists for the circuit” (Spinney, column 20, lines 35-39), such generalized mention in Spinney fails to show, teach or reasonably suggest the following combination of limitations in amended independent claim 13: (i) comparison of the rate credit value with zero to determine subsequent processing status of the data packet, (ii) dropping of the data packet without further processing when the rate credit value is zero, and (ii) processing of the data packet only when the rate credit value is non-zero as determined by the comparison.

Bergman and Choudhury similarly fail to cure the infirmities of Spinney. Neither Bergman nor Choudhury shows, teaches or fairly suggests a credit-based packet flow control as recited in amended independent claim 13. Because the citation of Bergman and Choudhury against the claim limitations in question is (quite correctly) not related to credit-based packet flow control (*see*, Office Action, items 9 and 10) as recited in amended independent claim 13, Applicant chooses not to discuss teachings in Bergman and Choudhury at length herein for the sake of brevity. However, Applicant reserves the right to discuss in the future the scope and content of Bergman and Choudhury as well as the propriety of their combination with Spinney when necessary.

From the foregoing, Applicant asserts that amended independent claim 13 is not rendered obvious under 35 U.S.C. §103(a) by the combined teachings in Spinney, Bergman, and Choudhury. Hence, dependent claims 22-24 and 27 are also patentable over the posited

combination of Spinney, Bergman, and Choudhury at least based on their dependence on the allowable independent claim 13. The other independent claim 33 has been amended to contain at least the limitations similar to those recited above with respect to claim 13. Therefore, the arguments in favor of patentability of claim 13 over the posited combination of Spinney, Bergman, and Choudhury apply equally to the patentability of amended independent claim 33 under 35 U.S.C. §103(a). Hence, dependent claims 42-44 and 47 are also allowable under 35 U.S.C. § 103(a) over the posited combination of Spinney, Bergman, and Choudhury at least based on their dependence on corresponding allowable independent claim 33. Reconsideration and allowance of claims 22-24, 27, 42-44, and 47 is therefore respectfully requested.

*Allowable Subject Matter*

Claims 20 and 40 are objected to as being dependant upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant wishes to express appreciation for the indicated allowability of dependent claims 20 and 40.

However, Applicant has chosen not to rewrite these claims in independent forms at this time because of the claim amendments to their corresponding independent claims 13 and 33 presented herein, and because of patentability of amended independent claims 13 and 33 in view of the cited references, whether applied singly or in combination, as discussed more fully in the discussion hereinabove. In view of such discussion, Applicant requests the Examiner to withdraw the objection to claims 20 and 40 in view of allowability of their corresponding independent claims 13 and 33. Reconsideration and allowance of claims 20 and 40 is therefore respectfully requested.



*New Claims*

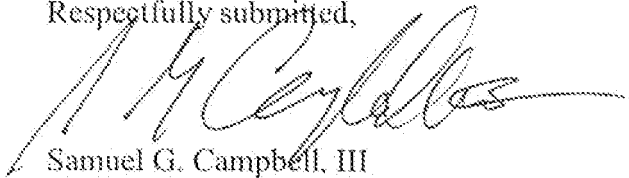
The present response adds new dependent claims 75-76 that depend from independent claim 13, new dependent claims 77-78 that depend from independent claim 33, and new dependent claims 79-80 that depend from independent claim 59. In view of the discussion of allowability of independent claims 13 and 33 over the posited combination of Spinney, Bergman, and Choudhury, Applicant asserts that amended independent claim 59 is also allowable over the posited combination of Spinney, Bergman, and Choudhury—whether applied singly or in combination—because claim 59 has been amended to contain at least the limitations similar to those present in independent claims 13 and 33. Therefore, new claims 75-80 are allowable over the cited references (Spinney, Bergman, and Choudhury), whether applied singly or in combination, at least based on their respective dependence on independent claims 13, 33, and 59. Hence, favorable consideration and allowance of new claims 75-80 is respectfully requested.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. G. Campbell, III', is written over the typed name.

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